

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit, ZBA FY2012-00001, to create a supplemental apartment, in a new single family dwelling, under Section 5.011 of the Zoning Bylaw, as applied for by Ruth Hazzard and Claude Tellier, at 235 Pine Street (Map 5C, Parcel 30, R-N, R-LD Zoning Districts & FC overlay district) with the following conditions:

1. The supplemental apartment shall be constructed substantially in accordance floor plan, revised August 17, 2011 and stamped approved on August 18, 2011.
 - a. The supplemental apartment shall not exceed 580 square feet, including any storage associated with the apartment.
 - b. The interior wall shall be constructed to provide sound attenuation between the apartment and the basement workshop/storage area.
 - c. Substantial changes to the approved floor plans shall be reviewed by the Zoning Board of Appeals at a public meeting in order to determine whether the changes may require a new Special Permit.
2. The property shall be improved substantially in accordance with the site plan, as amended, revised August 17, 2011 and stamped approved on August 18, 2011.
 - a. Adequate screening between the parking area and the north property line shall be provided and maintained so as to prevent headlights from shining onto the northerly adjacent property. The screening shall consist of a berm, and/or evergreens in accordance with the requirements of Section 7.112 of the Zoning Bylaw.
 - b. A pole light shall be installed as located on the site plan and of a design similar to the submitted specifications for the fixture.
3. The supplemental apartment shall be managed in accordance with Management Plan, stamped approved on August 18, 2011 except that trash storage shall be stored in the garage.
4. The lease agreement shall disclose to any potential tenant that the owners may occasionally use power tools in the workshop located adjacent to the apartment.
5. The dwelling, particularly the features associated with the supplemental apartment, shall be constructed substantially in accordance with the submitted drawing of the west façade, showing the entrance of the apartment, stamped approved on August 18, 2011.
6. The occupancy of the supplemental apartment shall not exceed three people nor shall the property be used for accessory lodging, in accordance with Section 5.01111 of the Zoning Bylaw.
7. The owner must reside in one of the units and the permit shall expire if the property is no longer the principal domicile of the owner.

8. The amount of fill associated with the construction of the dwelling shall be less than the thresholds established in Section 5.10 of the Zoning Bylaw.
9. Prior to a Certificate of Occupancy, the supplemental apartment shall be registered with the Amherst Health Department Rental Registration.
10. There shall be a reflective street address sign, visible from both directions, and located at the end of the driveway. The sign shall be installed in accordance with the requirements of the Fire Department.

Hilda Greenbaum, Acting Chair
Amherst Zoning Board of Appeals

DATE

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant & owner: Ruth Hazzard & Claude Tellier
106 Logtown Road, Amherst, MA 01002

Date application filed with the Town Clerk: July 13, 2011

Nature of request: To create a supplemental apartment, in a new single family dwelling, under Section 5.014 of the Zoning Bylaw

Address: 235 Pine Street (Map 5C, Parcel 30, R-N, R-LD Zoning Districts & FC overlay district)

Legal notice: Published on July 27, 2011 and August 3, 2011 in the Daily Hampshire Gazette and sent to abutters on July 27, 2011

Board members: Hilda Greenbaum, Keith Langsdale, Carolyn Holstein

Staff members: Jeff Bagg, Senior Planner and David Waskiewicz, Building Inspector

Submissions:

- Project Application Report, dated August 19, 2011, submitted by Town staff
- ZBA application, filed July 13, 2011
- Management Plan
- Floor Plans, revised August 5, 2011
- Elevations
- Site Plan, dated August 5, 2011
- Sample lease
- Site photographs, submitted by staff
- Town GIS map, submitted by staff
- ZBA FY2007-00005, with approved plans, submitted by Town Staff
- Revised basement floor plan, dated August 6, 2011
- Revised site plan (showing parking, etc), dated August 6, 2011
- A lighting “cut sheet”
- Site Plan showing approximate fill amounts, received August 11, 2011
- Email from Jason Skeels, Town Engineer, dated August 10, 2011
- Email from Bruce Coldham, 155 Pine Street, dated August 10, 2011
- Letter from Jeremy Barker Plotkin, 241 Pine Street, dated August 11, 2011

Site Visit: August 9, 2011

Hilda Greenbaum, Keith Langsdale, Carolyn Holstein, and the Senior Planner met the applicants, Ruth Hazzard and Claude Tellier, on-site. The following was observed:

- The location of the property along the south side of Pine Street accessed by a gravel driveway shared with 241 Pine Street.
- The approximate locations of the west property line, adjacent to the North Amherst Community Farm; the north property line adjacent to an existing single family home; the east property line within a moderately wooded area; and, the south property line.
- The approximate location of the single family dwelling, detached garage, and driveway on the flag lot demarked by the applicant with wooden stakes.

- The location of the parking area and turn around close to Pine Street and an emergency vehicle turnaround area on the property of 241 Pine Street.

Public Hearing: August 11, 2011

Ms. Greenbaum and Ms. Holstein both disclosed that they had donated to the North Amherst Community Farm at various times, but that this would not affect their ability to decide on the matter objectively.

The applicants, Ruth Hazzard and Claude Tellier, spoke regarding the application. Ms. Hazzard's statements are summarized as follows:

- They are planning to construct a new single family dwelling that will be their principal residence. They are proposing to construct a small studio apartment in the basement of the dwelling.
- The apartment will be approximately 580 square feet in size, consisting of 530 square feet of livable area, and an additional 50 square feet for tenant storage. The dimensions of the apartment are approximately 21 feet x 25 feet, minus the storage area.
- The main entrance to the apartment will be at grade level along the west side of the dwelling. The floor plan shows two possibilities for the location of a second means of egress in order to meet the Building Code requirements, both located on the west side of the dwelling.
- An additional door from the interior of the dwelling into the apartment will be built for convenience but it is not intended to meet the egress requirements of the Building Code.
- The site plan shows the location of the driveway, two parking spaces for the apartment, and a garage containing two spaces for the owner. The plan also provides an area for the vehicles leaving the garage to turn around.
- All of the lot coverage requirements are met and are shown on the site plan. The site plan shows an area adjacent to the parking area to be screened by either a berm or vegetation, at least three feet high in order to block headlights.
- All exterior lighting will be downcast and is designed to adequately light the parking area and pathway.
- The site will be re-graded to create the walk-out basement area at the west side of the dwelling.
- The Management Plan originally stated that the trash and recycling would be stored in the basement. However, this has changed such that the tenant's trash and recycling would be stored in the garage. The owners will be responsible for taking the trash and recycling to the street for pick-up.
- The owner will be responsible for maintaining the landscaping for the entire property, including the areas associated with the apartment.
- Snow removal will be either done by a contractor or completed by the owners.
- An area in the basement is available for tenant storage, including adequate space for tenants' bicycles.

The Board members expressed concern as to whether the pathway and parking area would be adequately lit for the safety of the tenants. The Board members discussed the topography of the site and the grading required for the driveway and parking area relative to the proposed lighting. The applicant indicated that the grade of the parking area and driveway will be leveled, and will be slightly higher than the ground floor of the apartment. The Board members determined a pole light shall be required and located to ensure that the area is properly lit.

The Board members discussed the grading. Town staff indicated that the thresholds for fill in Section 5.10 establish two thresholds, which if exceeded require a Special Permit; A) raising the grade greater than two feet in height an area greater than 5,000 square feet; or, B) raising the grade greater than six feet in height an area greater than 2,000 square feet. The applicant submitted a site plan showing the approximate areas of grading required and confirmed that the expected grading will be approximately 1,000 square feet in area, less than those thresholds.

Mr. Langsdale MOVED to close the evidentiary portion of the public hearing. Ms. Holstein seconded the motion and the Board VOTED unanimously to close the public hearing.

Ms. Greenbaum MOVED to continue the public meeting to August 18, 2011 at 4:30 p.m. Ms. Holstein seconded the motion and the Board VOTED unanimously to continue the public meeting.

Public Meeting: August 18, 2011

The Board members reviewed the additional information, including a revised site plan showing a location for a pole light and a specification sheet showing the type of fixture. The Board members determined that the location of the fixture should be moved closer to the driveway to ensure that it will properly light the driveway and walkway for tenants' safety. The Board demarked this revised location on the site plan.

The Board members discussed the location of the apartment adjacent to a workshop in the basement of the building. The applicant stated that the workshop will not be a wood working shop, but that there might be occasional use of power tools by the owners. Citing concerns related to the potential noise from the use of power tools so close to the apartment wall, the Board discussed whether additional measures, such as sound proofing, should be required. The Building Inspector stated that the Building Code has minimum requirements for sound proofing between units. He noted that there are several different ways to provide additional proofing, such as sound channeling or different thicknesses of sheetrock. He also noted that the owner could make tenants aware of the potential for power tools to be used in the basement, by indicating it in the lease agreement.

The Board members determined that additional measures, such as creating an air pocket and/or making the wall wider than normal, should be required to reduce the potential of the workshop noise becoming a nuisance for the tenants of the apartment.

The remainder of the meeting was utilized to by the Board members to discuss findings and conditions.

Specific Findings:

The Board found that under Section 5.011, supplemental apartment, the following:

5.01110 - There shall not be more than 800 square feet of gross floor area in a supplemental apartment, except that any apartment built and maintained as fully accessible under the provisions of the Americans with Disabilities Act (ADA) may include a maximum of 900 square feet in gross floor area. The submitted floor plan shows that the supplemental apartment is 580 square feet in size, including a tenant storage area.

5.01111- Any single family dwelling in which a supplemental apartment is constructed shall not be used simultaneously for accessory lodging under any provision of Section 5.010. The submitted floor plan shows that unit is a one-bedroom efficiency unit. The Board members determined that a condition of the permit should prohibit the use of the dwelling for accessory lodging.

5.01112- *One of the dwelling units shall be occupied by the owner(s) of the principal single family residence, which requirement shall be made a condition of any Special Permit issued under this section.* The owners stated that they will reside in the house; the Board determined that this will be a condition of the Special Permit.

5.01113- *Notwithstanding the provisions of Section 12.14, a supplemental apartment shall be occupied by a total of no more than three (3) people.* The Board members determined that the occupancy of the apartment would be limited to three people as a condition of the approval.

The Board found under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 and 10.381 - *The proposal is suitably located in the neighborhood in which it is proposed and/or the total Town, as deemed appropriate by the Special Permit Granting Authority; The proposal is compatible with existing Uses and other Uses permitted by right in the same District.*

The proposal is for a small rental unit within a single family dwelling, which is allowed in this area with a Special Permit. The creation of the supplemental apartment will not change the appearance of the house and the number of apartment occupants will be limited to three people.

10.382, 10.383 and 10.385 - *The proposal would not constitute a nuisance due to air and water pollution, flood, noise, odor, dust, vibration, lights, or visually offensive structures or site features; The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians; The proposal reasonably protects the adjoining premises against detrimental or offensive uses on the site, including air and water pollution, flood, noise, odor, dust, vibration, lights or visually offensive structures or site features.* A condition of the permit will require that all exterior lighting be either designed or arranged to be downcast in order to prevent lights from shining onto adjacent properties. The addition of a pole light is intended to provide lighting of the driveway and walkway for the safety of the tenants. The supplemental apartment will be separated by a sound- attenuating wall and tenants will be notified in the lease of the potential for the use of power tools in the adjacent workshop. The parking area includes an adequate turnaround area for the owners and tenants.

10.384 & 10.389 & 10.396 - *Adequate and appropriate facilities would be provided for the proper operation of the proposed use; The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables, and other wastes resulting from the uses permitted or permissible on the site, and methods of drainage for surface water; The proposal provides screening storage areas, loading docks, dumpsters, rooftop equipment, utility buildings and similar features.* The trash and recycling associated with the supplemental apartment will be stored in the garage and the interior of the apartment includes a tenant storage area. The property will be connected to the Town's sewer system.

10.386 - *The proposal ensures that it is in conformance with the Parking and Sign regulations (Articles 7 and 8, respectively) of this Bylaw.* The proposal provides two parking spaces per unit in accordance with Section 7.000 of the Zoning Bylaw. Additionally, the parking area includes an adequate turnaround area for the owners and the tenants. The parking area will be screened by either a berm or plantings in accordance with the requirements of Section 7.112 of the Zoning Bylaw. No signs are proposed as part of this application.

10.393 & 10.387- *The proposal provides protection of adjacent properties by minimizing the intrusion of lighting including parking lot and exterior lighting, through use of cut-off luminaires, light shields, lowered height of light poles, screening, or similar solutions.* A condition of the permit requires that all exterior lighting be either designed or arranged to be downcast to prevent lights from shining onto adjacent properties. The addition of a pole light is intended to provide lighting of the driveway for the safety and convenience of the tenants.

The parking area will be screened by either a berm or plantings to prevent headlights from shining onto the abutting property, in accordance with the requirements of Section 7.112 of the Zoning Bylaw. The parking area provides adequate turning space for safe and convenient vehicle maneuvering.

10.398- The proposal is in harmony with the general purpose and intent of this Bylaw, and the goals of the Master Plan. The supplemental apartment meets the purpose and intent of Section 5.0110 for a supplemental apartment as it is a small unit, to be located within a single family dwelling. The proposal will encourage a greater mix of housing and expands the number of rental units.

Public Meeting – Zoning Board Decision

Ms. Holstein moved to approve the application with conditions. Mr. Langsdale seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to grant a Special Permit, ZBA FY2012-00001, to create a supplemental apartment, in a new single family dwelling, under Section 5.011 of the Zoning Bylaw, as applied for by Ruth Hazzard and Claude Tellier, at 235 Pine Street (Map 5C, Parcel 30, R-N, R-LD Zoning Districts & FC overlay district) with conditions.

HILDA GREENBAUM

KEITH LANGSDALE

CAROLYN HOLSTEIN

FILED THIS _____ day of _____, 2011 at _____,
in the office of the Amherst Town Clerk _____.

TWENTY-DAY APPEAL period expires, _____ 2011.

NOTICE OF DECISION mailed this _____ day of _____, 2011
to the attached list of addresses by _____, for the Board.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2011,
in the Hampshire County Registry of Deeds.